

# Legal and Policy Update

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Jeremy Baskin, CBP

Richard McManus, CBP

John Peterson, CH Powell

John Leonard, CBP

Phyllis Henry, CBP



U.S. Customs and  
Border Protection

# Agenda

- Miscellaneous Tariff Bill
- Presentation of Advance Electronic Cargo Information vs. Electronic Manifest
- Publication of Federal Register Notices
  - Change in ACE Eligibility Requirements
  - Terms and Conditions document



# Miscellaneous Tariff Bill



U.S. Customs and  
Border Protection

# Miscellaneous Tariff Bill

- Section 2106: Definitions
- Section 2101: Entry of Merchandise
- Section 2107: Voluntary Re-liquidations
- Sections 1563(e) and 2102: Limitations of Liquidations
- Section 2004 Subsection (c): Technical Amendments
  - Deposit of Duties
- Section 2103: Protests
- Section 2104: Review of Protests
- Section 2105: Refunds and Errors



# Miscellaneous Tariff Bill: 2106

- Section 2106: DEFINITIONS
  - Amendments to 19 USC 1401
    - Added new subsection (t):
      - (t) RECONFIGURED ENTRY. The term “reconfigured entry” means an entry filed on an import activity summary statement which substitutes for all or part of one or more entries filed under section 484(a)(1)(A) or filed on a reconciliation entry that aggregates the entry elements to be reconciled under section 484(b) for purposes of liquidation, reliquidation, and protest.



# Miscellaneous Tariff Bill: 2101

- Section 2101: ENTRY OF MERCHANDISE
  - Amendments to 19 U.S.C. 1484(a)
    - (1) ...an importer or record ... shall, using reasonable care –
      - (A) make entry ... and
      - (B) complete the entry, **or substitute 1 or more reconfigured entries on an import activity summary statement**, by filing with Customs the declared value, classification and rate of duty applicable to the merchandise ...



# Miscellaneous Tariff Bill (*continued*)

- (2)(A) The documentation or information required ... with respect to any imported merchandise shall be filed or transmitted in such manner and within such time periods as the Secretary shall by regulation prescribe. Such regulations shall provide for the filing of import activity summary statements, **and permit the filing of reconfigured entries,** covering entries or warehouse withdrawals made during a calendar month, within such time period as is prescribed in regulations but not to exceed the 20th day following such calendar month. **Entries filed under paragraph (1)(A) shall not be liquidated if covered by an import activity summary statement, but instead each reconfigured entry in the import summary statement shall be subject to liquidation or reliquidation pursuant to section 500, 501, or 504.**



# Miscellaneous Tariff Bill (*continued*)

- **Amendments to 19 U.S.C. 1484(b)**
  - .... The reconciliation shall be filed by the importer of record at such time and in such manner as the Secretary prescribes but not later than **21 months** after the date the importer declares his intent to file the reconciliation....”
- **Publication of Federal Register Notice (70 FR 1730, dated January 10, 2005)**
  - **Modifies the Reconciliation prototype test by changing the requirement for filing the reconciliation entry from no later than 15 months to no later than 21 months after the date the importer declares its intent to file the Reconciliation.**
  - **This change does not apply to Reconciliation entries covering NAFTA or US-CFTA claims.**
  - **This modification is effective February 9, 2005**





# Miscellaneous Tariff Bill: 2107

- Section 2107: VOLUNTARY RELIQUIDATIONS
  - Amendment to 19 U.S.C. 1501
    - A liquidation made in accordance with section 500 or 504 of this title or any reliquidation thereof ... may be reliquidated in any respect by the Customs Service on his own initiative, notwithstanding the filing of a protest, within ninety days ...



# Miscellaneous Tariff Bill: 1563e & 2102

- Sections 1563(e) and 2102: LIMITATION ON LIQUIDATIONS
  - Amendments to 19 U.S.C. 1504
    - (a)(1) ENTRIES FOR CONSUMPTION. -- .... An entry of merchandise for consumption not liquidated within 1 year from --
      - (A) ....
      - (B) ...
      - (C) ...



# Miscellaneous Tariff Bill: 1563e & 2102

## *(continued)*

- (D) if a reconciliation is filed, or should have been filed, the date of the filing under section 484 or the date the reconciliation should have been filed, **whichever is earlier**, or
- **(E) if a reconfigured entry is filed under an import activity summary statement, the date the import activity summary statement is filed or should have been filed, whichever is earlier;**

shall be deemed liquidated at the rate of duty, value, quantity, and amount of duties asserted\* by the importer of record

- \*The words **“(at the time of entry)”** have been deleted



# Miscellaneous Tariff Bill: 1563e & 2102

## *(continued)*

- (a)(2) ENTRIES OR CLAIMS FOR DRAWBACK.--
  - (A) IN GENERAL. - Except as provided in subparagraph (B) or (C), unless an entry or claim for drawback is extended under subsection (b) or suspended as required by statute or court order, an entry or claim for drawback not liquidated within 1 year from the date of entry or claim shall be deemed liquidated at the drawback amount asserted by the claimant at the time of entry or claim. Notwithstanding section 500(e), notice of liquidation need not be given of an entry deemed liquidated.



# Miscellaneous Tariff Bill: 1563e & 2102

## *(continued)*

- (B) UNLIQUIDATED IMPORTS- An entry or claim for drawback whose designated or identified import entries have not been liquidated and become final within the 1-year period described in subparagraph (A), or within the 1-year period described in subparagraph (C), shall be deemed liquidated upon the deposit of estimated duties on the unliquidated imported merchandise, and upon the filing with the Customs Service of a written request for the liquidation of the drawback entry or claim. Such a request must include a waiver of any right to payment or refund under other provisions of law. The Secretary of the Treasury shall prescribe any necessary regulations for the purpose of administering this subparagraph.



# Miscellaneous Tariff Bill: 1563e & 2102

## *(continued)*

- (C) EXCEPTION- An entry or claim for drawback filed before the date of the enactment of this paragraph, the liquidation of which is not final as of the date of the enactment of this paragraph, shall be deemed liquidated on the date that is 1 year after the date of the enactment of this paragraph at the drawback amount asserted by the claimant at the time of the entry or claim.



# Miscellaneous Tariff Bill: 1563e & 2102

## *(continued)*

- (a)(3) PAYMENTS OR REFUNDS- Payment or refund of duties owed pursuant to paragraph (1) or (2) shall be made to the importer of record or drawback claimant, as the case may be, not later than 90 days after liquidation.



# Miscellaneous Tariff Bill: 1563e & 2102

## *(continued)*

- (b) EXTENSION- The Secretary of the Treasury may extend the period in which to liquidate an entry if
  - (1) the information needed for the proper appraisement or classification of the imported or withdrawn merchandise, or for determining the correct drawback amount, or for ensuring compliance with applicable law, is not available to the Customs Service; or
  - (2) the importer of record or drawback claimant, as the case may be, requests such extension and shows good cause therefore.





# Miscellaneous Tariff Bill: 1563e & 2102

## *(continued)*

- (b) EXTENSION- The Secretary of the Treasury may extend the period in which to liquidate an entry if
  - The Secretary shall give notice of an extension under this subsection to the importer of record or drawback claimant, as the case may be, and the surety of such importer of record or drawback claimant. Notice shall be in such form and manner (which may include electronic transmittal) as the Secretary shall by regulation prescribe. Any entry the liquidation of which is extended under this subsection shall be treated as having been liquidated at the rate of duty, value, quantity, and amount of duty asserted at the time of entry by the importer of record, or the drawback amount asserted at the time of entry by the drawback claimant, at the expiration of 4 years from the applicable date specified in subsection (a).



# Miscellaneous Tariff Bill: 1563e & 2102

## *(continued)*

- **(c) NOTICE OF SUSPENSION.** If the liquidation of an entry is suspended, the Secretary shall by regulation require notice of the suspension be provided ... to the importer of record **or drawback claimant, as the case may be,** and to any authorized agent and surety of such importer of record **or drawback claimant.**
- **(d) REMOVAL OF SUSPENSION.** ..... Any entry (other than an entry with respect to which liquidation has been extended under subsection (b)) not liquidated by the Customs Service within 6 months after receiving such notice shall be treated as having been liquidated at the rate of duty, value, quantity, and amount of duties asserted by the importer of record **or (in the case of a drawback entry or claim) at the drawback amount asserted at the time of entry by the drawback claimant.**



# Miscellaneous Tariff Bill: 1563e & 2102

## *(continued)*

- **EFFECTIVE DATE-**
  - **SUBSECTION (e)** - The amendments made by subsection (e) shall take effect on the date of the enactment of this Act, and shall apply to
    - (A) any entry of merchandise for consumption or entry or claim for drawback filed on and after such date of enactment; and
    - (B) any entry or claim for drawback filed before such date of enactment if the liquidation of the entry or claim is not final on such date of enactment.



# Miscellaneous Tariff Bill: 2004

- Section 2004(c): TECHNICAL AMENDMENTS
  - Amendment to 19 U.S.C. 1505
    - (a) Deposit of estimated duties and fees.
    - Unless the entry is subject to a periodic payment referred to in this subsection or the merchandise is entered for warehouse or transportation, or under bond, the importer of record shall deposit with the Customs Service at the time of entry, or at such later time as the Secretary may prescribe by regulation (but not later than **12 working days** after entry or release) the amount of duties and fees estimated to be payable on such merchandise. As soon as a periodic payment module of the Automated Commercial Environment is developed .....



# Miscellaneous Tariff Bill: 2004

## *(continued)*

- **Section 2004(c): TECHNICAL AMENDMENTS**
  - **Amendment to 19 U.S.C. 1505**
    - ...the Secretary shall promulgate regulations, after testing the module, permitting a participating importer of record to deposit estimated duties and fees for entries of merchandise, other than merchandise entered for warehouse, transportation, or under bond, no later than the 15 working days following the month in which the merchandise is entered or released, whichever comes first.
  - **Publication of Federal Register Notice announcing the "change" in the periodic statement payment due date from the 15th calendar day (as was previously published in 69 FR 5362, dated February 4, 2003, announcing the periodic payment test) to 15<sup>th</sup> working day**



# Miscellaneous Tariff Bill: 2103

- Section 2103: PROTESTS
  - Amendments to 19 U.S.C. 1514
    - (a) Finality of decisions; return of papers. Except as provided in subsection (b) of this section, section 1501 of this title (relating to voluntary reliquidations), section 1516 of this title (relating to petitions by domestic interested parties), and section 1520 (relating to refunds), any clerical error, mistake of fact, or other inadvertence, whether or not resulting from or contained in an electronic transmission, adverse to the importer, in any entry, liquidation or reliquidation, and decisions of the Customs Service, including the legality of all orders and findings entering into the same, as to --
      - (1) ...
      - (2) ...
      - (3) ...
      - (4) ...



# Miscellaneous Tariff Bill: 2103

## *(continued)*

- (5) the liquidation or reliquidation of an entry, or reconciliation as to the issues contained therein, or any modification thereof, **including the liquidation of an entry, pursuant to either section 500 or section 504;**
- (6) ...
- (7) ...
- shall be final and conclusive upon all persons (including the United States and any officer thereof) unless a protest is filed....



# Miscellaneous Tariff Bill: 2103

*(continued)*

- (c) Form, number, and amendment of protest; filing of protest.
  - (1) ..... Unless a request for accelerated disposition is filed under section 515(b), a protest may be amended .... to set forth objections .... which were not the subject of the original protest, .... any time prior to the expiration of the time in which such protest could have been filed under this section.
  - (2) ...





# Miscellaneous Tariff Bill: 2103

## *(continued)*

- (c) Form, number, and amendment of protest; filing of protest.
  - (3) A protest of a decision, order, or finding described in subsection (a) of this section shall be filed with the Customs Service within 180 days after but not before-
    - (A) **date of** liquidation or reliquidation, or
    - (B) ...
    - A protest by a surety which has an unsatisfied legal claim under its bond may be filed within **180 days** from the date of mailing of notice of demand for payment against its bond ...



# Miscellaneous Tariff Bill: 2104

- Section 2104: REVIEW OF PROTESTS
  - Amendment to 19 U.S.C. 1515(b)
    - Request for accelerated disposition. A request for accelerated disposition of a protest ... may be mailed ... any time **concurrent with or** following the filing of such protest. ....



# Miscellaneous Tariff Bill: 2105

- Section 2105: REFUNDS AND ERRORS
- Amendment to 19 U.S.C. 1520
  - Subsection (c) is repealed



# Presentation of Advanced Electronic Cargo Information vs. Electronic Information



U.S. Customs and  
Border Protection

# Advance Electronic Cargo Information

- Legislation : The Trade Act of 2002
  - Mandatory for all commercial truck carriers
  - Authorizes the Secretary of the Department of Homeland Security to promulgate regulations providing for the transmission to Customs, through an electronic data interchange system, of information pertaining to cargo to be brought in to or to be sent from the United States prior to the arrival or departure of the cargo.



# Advance Electronic Cargo Information (*continued*)

- Regulations:
  - 68 FR 68140, published December 5, 2003
    - Carriers must submit electronic advance cargo information prior to arrival of that cargo at a port of entry in the United States
    - Description of data presentation requirements for electronic advance cargo information in all transportation modes



# Advance Electronic Cargo Information (*continued*)

- 69 FR 51007, published August 17, 2004
  - Truck carriers must use one of two interim electronic system solutions:
    - Pre-Arrival Processing System (PAPS); or
    - QP/WP (electronic in bond program)
  - As a temporary accommodation, truck carriers can continue to use the Customs Automated Forms Entry System (CAFES) or the Border Release Advanced Screening and Selectivity (BRASS) programs if they are current users of those programs



# Advance Electronic Cargo Information (*continued*)

- Requirements:
  - Information must be received by CBP no later than one hour prior to the carrier reaching the first port of arrival in the United States
  - Information for shipments under the Free and Secure Trade (FAST) program must be received no later than 30 minutes prior to the carrier reaching the first port of arrival in the United States
- Exceptions:
  - Cargo in transit from point to point in the United States after transiting through Canada or Mexico;
  - Certain informal entries





# e-Manifest: Trucks

- 69 FR 55167, published September 13, 2004
  - Voluntary on behalf of the truck carrier
  - General Notice announcing a test of the Automated Truck Manifest for truck carrier accounts
  - Invites any commercial truck carrier to apply to establish a carrier account and to participate in the testing of electronic truck manifest functionality
  - Test participants who submitted manifest information in the Automated Truck Manifest test would be in compliance with Advance Electronic Cargo Information requirements



# e-Manifest: Trucks (*continued*)

- Requirements:
  - Participating truck carriers will have the ability to electronically transmit the truck manifest data and obtain release of their cargo, crew, conveyance, and equipment via electronic data interchanges (EDI) or via the web through the ACE Secure Data Portal
  - Additional eligibility requirements for participation were established in the Federal Register of February 4, 2004 (69 FR 5360) describing the process to establish a carrier account
  - Note: Participation in FAST is not required
    - Until ACE subsumes FAST, the process for transmitting data to FAST will remain the same as it is today



# Publication of Federal Register Notices: Change in ACE Eligibility Requirements; Terms and Conditions



U.S. Customs and  
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# Federal Register Notice: Change in ACE Eligibility Requirements

- Change in ACE Eligibility Requirements
  - C-TPAT no longer a requirement for the establishment of importer and broker ACE Accounts or to participate in any test
  - ACE carrier accounts already exempted from C-TPAT requirement



# Federal Register Notice: Terms and Conditions

- Terms and Conditions document
  - Previous Policy Included:
    - Account Owner must sign and submit the Terms and Conditions document prior to accessing the ACE Secure Data Portal
    - Account Owner must be a U.S. resident
    - 90 day inactivity period for the Account Owner results in requirement to resubmit signed Terms and Conditions document to CBP



# Federal Register Notice: Terms and Conditions (*continued*)

- New Policy Includes:
  - Publication of the Terms and Conditions document as a Federal Register Notice replaces the Trade account requirement to sign and submit the Terms and Conditions document to CBP
  - Access to the ACE Secure Data Portal Account and participation in ACE prototypes constitutes acquiescence of the Terms and Conditions notice
  - Removal of U.S. residency requirement for the Account Owner



# Federal Register Notice: Terms and Conditions (*continued*)

- Removal of requirement to submit a signed Terms and Conditions document if the Account Owner fails to log on to the ACE Secure Data Portal for 90 consecutive days
- Additionally:
  - Removal of the reference to the required corporate seal on the Power of Attorney form (also referred to as the Account Owner Designation form)
  - Integration of two documents: Account Owner Designation and Additional Account/Account Owner Information form



# Questions



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# U.S. Customs and Border Protection